

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 6234**

**BILL NUMBER: SB 67**

**DATE PREPARED:** Apr 10, 2001

**BILL AMENDED:** Apr 9, 2001

**SUBJECT:** Corrections, Criminal Law, and Procedures.

**FISCAL ANALYST:** Mark Goodpaster

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**FUNDS AFFECTED:** ☒ **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

(A) It eliminates a mathematical error in the definition of "minimum sentence" by changing the definition of "minimum sentence" for murder from 30 years to 45 years and by changing the definition of "minimum sentence" for a Class D felony from one year to one-half year.

(B) It provides additional sentencing options for nonviolent drug felony offenders who are not convicted of dealing drugs.

(C) It provides that nonviolent drug felonies may not be used to classify an offender as a habitual offender.

(D) It allows a court to reduce the minimum term of imprisonment for a habitual substance offender if the only offenses that the offender committed were nonviolent criminal acts.

(E) It prohibits the Department of Correction, county jails, community corrections facilities, and juvenile detention facilities and centers from profiting financially from providing telephone service to confined offenders.

(F) It describes the duties of the Board of Correction. It voids bylaws adopted by the Board of Correction before October 1, 1980.

**Effective Date:** (Amended) Upon passage; July 1, 2001.

**Explanation of State Expenditures:** (Revised) Provision A resolves the current conflict in the sentencing statute concerning how minimum sentences are determined for murder and Class D felonies. Consequently, the practical effect is that no change will occur in sentencing patterns of the trial courts.

While IC 35-50-2-1(c)(1) specifies that the minimum sentence for murder is 30 years, IC 35-50-2-3 states that the fixed term is 55 years with not more than 10 years added for aggravating circumstance and 10 years subtracted for mitigating circumstances.

For Class D felonies, IC 35-50-2-1 specifies that the minimum sentence is one year while IC 35-50-2-7

specifies that the fixed term is 1.5 years with 1.5 years added as aggravators and one year subtracted for mitigators.

Provision B may reduce the need for additional beds in DOC facilities in future years, depending on the decisions by the sentencing courts. The following are the major changes to the sentencing laws. More information will be provided on the potential reduction in beds if information becomes available.

Community Transition Changes: The following table shows how the community transition program would be extended for offenders:

<u>Felony Class:</u>	<u>Length of Program</u>		
	<u>Current Law</u>	<u>Proposed</u>	<u>Reduced Time In DOC</u>
Class A -- nonviolent drug felonies	120 days	180 days	60 days
Class A -- all other felonies	120 days	no change	no change
Class B -- nonviolent drug felonies	120 days	180 days	60 days
Class B -- all other felonies	120 days	no change	no change
Class C -- nonviolent drug felonies	90 days	120 days	30 days
Class C -- all other felonies	90 days	no change	no change
Class D	60 days	no change	no change

Minimum Sentence Hearings: Under current law, the Department of Correction is required to determine whether Class D offenders are appropriate candidates for home detention. DOC sends these recommendations to the sentencing court. The sentencing court then holds a hearing to determine whether a person should be on home detention. Under this bill, the Department may also consider whether an offender could also be placed either on probation or in a community correction program, as well as on home detention, instead of in prison.

The following shows the number of commitments for Class C and D drug-related felonies between FY 1996 and FY 2000:

<u>Felony</u>	<u>Crime</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
C	Possession of a Controlled Substance	4	8	10	14	21
C	Possession of Cocaine or a Narcotic Drug	91	110	96	140	192
D	Forged Prescription	0	0	0	0	1
D	Possession of a Controlled Substance	47	47	50	75	113
D	Possession of Cocaine or a Narcotic Drug	171	204	188	231	382
D	Possession of Marijuana Hash Oil or Hashish	60	69	82	110	188
D	Possession of Paraphernalia	6	8	11	23	24
C	Controlled Substance Registration	5	1	5	3	1
D	Controlled Substance Registration	4	10	8	6	14
D	Maintaining a Common Nuisance	7	8	19	12	31
	Total	395	465	469	614	967

Direct Placement in Community Corrections Programs: Under current law, offenders convicted of nonviolent Class A or B drug felonies are not permitted to be placed directly into community corrections programs. Instead, they must be sentenced to a minimum time in state prison. This bill would permit these offenders to be placed directly into community corrections programs.

The extent to which these offenders will reduce the number of cells used by DOC facilities would depend on the decisions of the sentencing courts and whether the community corrections programs would have space available. DOC reports the number of offenders received between FY 1996 and FY 2000 for the following drug offenses:

<u>Felony</u>	<u>Crime</u>	<u>Fiscal Year</u>				
		<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
A	Possession of Cocaine or Narcotic Drug	5	6	4	11	31
B	Possession of Cocaine or Narcotic Drug	16	31	37	61	100
	Total	21	37	41	72	131

Limitations on Habitual Offender Sentencing: Under current law, offenders with two prior unrelated felony convictions are required to serve an additional sentence if they are convicted of a third prior unrelated felony. This third felony is called the underlying offense. The minimum sentence is not less than the presumptive sentence for the underlying offense. The maximum sentence is the lesser of either three times the presumptive sentence or 30 years. (IC 30-50-2-8(e)).

The following table shows the minimum and maximum enhanced sentences under current law.

Felony	Added Sentence for Third Felony Under Habitual Offender Statute	
	Minimum Sentence	Maximum Enhanced Sentence
Class D	1.5 years	4.5 years
Class C	4 years	12 years
Class B	10 years	30 years
Class A	30 years	30 years

This bill would exempt nonviolent drug felonies and two other types of felonies as one of the two prior felonies. In addition, nonviolent drug felonies would not be eligible to be an underlying offense. Consequently, this would likely reduce the length of stay for some offenders.

Limitations on Habitual Substance Offender Sentencing: Under current law, a person who has two prior unrelated substance abuse convictions can be sentenced as a habitual substance abuse offender if the person is convicted of a third offense. The additional term of imprisonment for habitual substance abuse offenders is between three and eight years. Under this bill, the court may consider the fact that these substance offenses were not part of an episode of criminal conduct involved in a criminal act and may reduce the additional fixed term to a minimum of one year.

Provisions E: Currently, the Department of Administration contracts with several telephone companies to provide telephone service to offenders in DOC facilities. Under this arrangement, offenders must make collect telephone calls to persons outside of prison that they wish to call. Depending on the arrangement with

the telephone carrier, the state receives a commission on either the gross or net revenue that is collected by using these telephones. This bill would no longer permit the state to receive a commission as part of the arrangement for these contracts. The revenue loss from this bill as amended could be between \$6.5 M and \$6.8 M based on reports for FY 1999 and FY 2000.

*Background:* The Department of Administration contracts with at least three major providers of telephone services for offenders in DOC facilities. GTE and Ameritech provide local calls, while AT&T provides long distance calls. Commissions received from GTE and Ameritech are deposited in the Offender Recreation Fund which is used in DOC facilities, while the commissions received from AT&T are deposited in the Pay Phone Fund.

Revenues from the Pay Phone Fund have been used to finance projects that will improve the telecommunications and computer capabilities of the state government.

The following shows the revenue deposited into these two funds from these commissions in FY 1999 and FY 2000:

<u>FY</u>	<u>Pay Phone Fund</u>	<u>Offender Recreation Fund</u>	<u>Total Revenue</u>
1999	\$5,809,008	\$693,485	\$6,502,493
2000	\$5,978,222	\$850,157	\$6,828,379

Provision F would increase the amount of oversight that the Board of Correction would have over the Department of Correction. However, it is not likely to significantly affect the operating costs of the Department.

#### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** Courts may sentence more offenders to probation programs and community corrections programs. Consequently, workloads at the local level would likely increase.

**Explanation of Local Revenues:** (Revised) Provision E: County sheriffs contract with telephone companies to provide telephone services to inmates in their jails. Under these arrangements, the sheriffs receive a percentage of either gross or net revenue that ranges between 22% and 44% for gross revenue and generally 50% for net revenue. This bill would eliminate this commission.

In the case of 62 counties where information was available, the commissions that these sheriffs receive from the contracts range from \$8,700 to \$2.3 M on an annualized basis. The total commissions based on either annualized amounts for CY 2000 or from reported commissions from CY 1998 or 1999 for these 62 counties was \$5.7 M, statewide.

The proceeds from these commissions are used in some counties to purchase law enforcement equipment, including weapons and squad cars. If the rates that are charged must be reduced to match the costs incurred in making these calls, then the amount that the sheriffs receive from these commissions would likely be significantly reduced.

Community corrections programs could incur similar revenue losses if program administrators have the same arrangements as are made with telephone companies.

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial courts, Community corrections programs, probation programs, prosecuting attorneys.

**Information Sources:** Steve Johnson, Indiana Prosecuting Attorneys Council, Department of Correction.